COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in tariff M.D.T.E. No. 17, filed with the Department on May 25, 2000, and June 14, 2000, to become effective June 24, or July 14, 2000, by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.	D.T.E. 98-57

COMMENTS OF RNK, INC. REGARDING

BELL ATLANTIC-MASSACHUSETTS'

MAY 25 AND JUNE 14, 2000, TARIFF FILINGS

RNK, Inc. d/b/a RNK Telecom ("RNK") is a registered Competitive Local Exchange Carrier ("CLEC") in the Commonwealth of Massachusetts offering residential and business telecommunications services via its own facilities, and by resale. Pursuant to the June 14, 2000, Memorandum of Hearing Officer Chin, RNK hereby submits its comments regarding Bell Atlantic-Massachusetts' ("BA") proposed Tariff No. 17 filings dated May 25, 2000, and June 14, 2000 (together, "the filing(s)" or "the proposed tariff"), as they are purportedly consistent with the Federal Communication Commission ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, released November 24, 1999 ("the FCC Third Report and Order") and relevant Massachusetts Department of Telecommunications and Energy ("DTE" or "the Department") orders and directives.

I. PROPOSED SERVICE AND INSTALLATION INTERVALS IN PART A, SECTION 3.2.3, ORDERING OF SERVICE, ARE UNREASONABLY LONG

A. The Proposed Provisioning Intervals are Substantially Longer than Established Intervals for Comparable Services and Installations

The various size and types of Links offered under Part A, Section 3 of BA's May 25 filing are parallel to existing Loop offerings, e.g., 2- and 4-wire Analog, provisioned through BA Wholesale Services. On BA's own website (bellatlantic.com/wholesale, attached as Exhibit A) for CLECs, BA outlines provisioning intervals on the order of 2-6 days for smaller quantity orders (longer for larger orders). In the proposed Tariff, several of the suggested intervals for similar quantities of parallel Links are well over two weeks, upwards of a month. While RNK recognizes that unbundled elements may require additional technical

adaptation, this should be more than compensated for in time by the ease of reconfiguring, even simply switching, a link rather than provisioning the physical installation and/or routing of a compatible loop, which would be more quickly provisioned in practice.

B. Many Proposed Intervals Incorporate an Unnecessarily Undefined or Inadequately Defined, Potentially Multiplying, Variable into the Interval, e.g., "pre-qualification," or a "facilities availability date."

The Department has already addressed the absolute importance of specificity in provisioning intervals:

Maintaining unspecified intervals for the provisioning of these transport facilities will detrimentally affect the CLECs' ability to plan, thereby potentially slowing the deployment of xDSL services in our state. … . The Department also requires Bell Atlantic as part of its compliance filing to propose construction intervals for situations when facilities are not available. Final Order, D.T.E. 98-57, Phase I (March 24, 2000) ("D.T.E. 98-57, Phase I"), Part X. B. (3) ¶2.

[T]he Department finds that specific provisioning intervals must be incorporated into Tariff No. 17 since provisioning intervals that are subject to on-going adjustments do not provide CLECs a full and fair opportunity to compete (see Exh. DTE-103; Exh. DTE-105). Moreover, Bell Atlantic already agreed to incorporating provisioning intervals into its tariff (Tr. 5, at 988). D.T.E. 98-57, Phase I, Part VI. C. (6)(c), ¶2.

Yet, the proposed tariff leaves open several intervals with unnecessarily undefined or inadequately defined, potentially multiplying, variables into the interval, e.g., "pre-qualification," or a "facilities availability date." The proposed tariff also leaves open the time within which BA must begin to act upon various requests and service orders. First, generally, it should be presumed, specified and required that BA shall initiate the process of any order within twenty-four (24) hours or one business day.

Moreover, several of the proposed intervals incorporate these undefined or referenced variables, potentially rendering the remaining timeframe meaningless in getting the respective services to the end user in a timely fashion. Throughout, terms such as "pre-qualification," "facilities availability date," "subject to availability," and the like (see cited list below), should be defined, referenced and specified in the relevant sections or by a reasonable and applicable reference to those established and/or codified processes to which they may refer.

Specific instances of these ill-defined variables include:

· §3.2.3 (A)[throughout]: "subject to facilities availability;"

· §3.2.3 (A)(10)(b) Digital High Capacity, 45 Mbps: "based on the facilities availability date;"

· § 3.2.5 (A)(1) Dedicated IOF Transport, DS1 and DS3: "[s]ubject to availability;"

· § 3.2.5 (B)(1)(2) Dedicated Multiplexer: "[s]ubject to availability;"

· § 3.2.6 (A)(B) NID/House and Riser Cable: "[s]ubject to available facilities;"

· § 3.2.8 (A)(1) Unbundled dark fiber, Cable Records Review: "except in cases of voluminous requests…;"

· § 3.2.10 (A)(1) Line Sharing: "[a]fter pre-qualification is completed;"

Similarly, the term "Appointment per SMARTS," loosely defined at Part A, Section 3.2.3 (B), only carries meaning insofar as the SMARTS system is properly staffed and resourced. It is well and good that CLEC orders should be in queue with others on a first-come, first-served basis, only if there are sufficient resources to address all of the orders in a timely manner. "Appointments per SMARTS" should have outside time limits after which, at the least, no cancellation (or "Non-Recurring") charges as per Part A, §3.3.4(A)(B) may apply against the requesting carrier.

C. The Proposed Intervals Have Not Been Shown to Be at Parity with Services BA Provides Itself

One of the purposes of the Act was to serve the consumers' interests, indeed to improve service to end users through open competition. CLEC's should not be required or beholden to limit themselves to a self-limiting standard of service, which may not be the best service technically available to end users.

BA should be required to show both that the proposed intervals are established at parity, timeframes within which BA is able to provide services to end users, and that the timeframes overall are reasonable relative to optimal resource levels, not just their own past experience. While RNK acknowledges that BA cannot be penalized after the fact for providing existing services only at parity, we encourage the Department to ensure the public interest by establishing threshold levels of services based upon a "technically efficient" standard, and directing all carriers, including the incumbent, to resource or cost themselves accordingly. As the Department and the CLECs must rely on the open market to improve past performance on traditional services, the introduction of new offerings should be forward-looking. See, e.g., Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-L (October 15, 1999) (DTE accepts CLEC argument that BA must employ forward-looking technology assumptions and efficiencies).

Thus, even to the extent BA may try to show it is equally slow in provisioning its own customers, if the DTE finds that better service is available on the open market, it may require BA (and CLECs) to provide the most efficient service.

II. THE NON-RECURRING CHARGES IN PART A, SECTION 3.3 ARE UNJUSTIFIED AS COSTS

Non-recurring charges ("NRCs") should be limited to actual costs and their implementation should be cautiously regulated to avoid undue barriers to entry in a given area of the market, and thus to competition. The Department has already decided that certain costs cannot be hidden or duplicated, and should be apportioned where they are actually incurred:

As part of its revised cost study and transaction-based non-recurring charge, the Department instructs Bell Atlantic to exclude the costs of Smart Jacks from its calculations. It is inappropriate for Bell Atlantic to include the cost of a piece of equipment in the testing charges for EEL loops when the cost should be included in the cost of the loop itself. D.T.E. 98-57, Phase I, Part VII (G)(3) ¶3.

In instances where an NRC may be prohibitive to market entry, efforts should be made to provide alternative mechanisms to bear the associated NRCs/costs: "The non-recurring charge mechanism as defined in the Phase 4-G Order of the Consolidated

Arbitrations provides CLECs with the option of "amortiz[ing] the NCR over the initial term of the [e.g., collocation] agreement. (Phase 4-G Order at 26)" D.T.E. 98-57, Phase I, n. 114.

Generally, the FCC has established that non-recurring charges can be a barrier to entry and competition. As such, care should also be taken not to impose NRCs and/or types of provisioning which might unnecessarily invoke repetitively or redundant NRCs, such as incremental provisioning or service orders to obtain one end product.(1) Throughout Part A, Section 3.3, there are NRCs which in certain chains of circumstances might build repetitively upon each other, producing an unnecessarily high burden on a CLEC in getting an order on-line for the customer. There should be limits in NRCs to the total administrative costs of a given installation.

III. UNBUNDLED INTEROFFICE FACILITIES (IOF) TRANSPORT IN PART B, SECTION 2, SHOULD BE AS UNRESTRICTED AS POSSIBLE

Generally, the presumption under the FCC Third Report and Order is that IOF should be made available as a UNE:

We find that requesting carriers are impaired without access to unbundled dedicated and shared transport network. In particular, self-provisioning ubiquitous interoffice transmission facilities, or acquiring these facilities from non-incumbent LEC sources, materially increases a requesting carrier's costs of entering a market or of expanding the scope of its service, delays broad-based entry, and materially limits the scope and quality of a requesting carrier's service offerings. … Accordingly, we conclude that incumbent LECs must offer unbundled access to their interoffice transmission facilities nationwide." FCC Third Report and Order, ¶ 321.

Therefore, in any exclusions, the burden would be on the ILEC to show why is it technically infeasible, the facilities do not exist, or the element is "sufficiently [otherwise] available [to CLECs] as a practical, economic, and operational matter, to warrant exclusion of interoffice transport." Id. In fact, by analogy, for example, the FCC Third Report and Order requires "incumbents to provide competing carriers with [e.g.] conditioned loops … supporting advanced services even where the incumbent is not itself providing advanced services to those customers." ¶ 186. The Department has similarly adhered to the FCC presumption against UNE restrictions.(2)

A. The Express Omission Of SONET Rings From Proposed Offerings In Section 2.1.1 (A)(1) Is Not Permitted Where And When BA Has Such Facilities

The exclusion of unbundled SONET rings, i.e., "The telephone company does not offer unbundled SONET rings" at Section 2.1.1 (A)(1), insofar as it is based on the FCC allowing this mission in the FCC Third Report and Order,(3) may now or presently violate the FCC Third Report and Order. The FCC permitted an ILEC not to offer SONET rings when to offer them would have required actual construction of new facilities (when the ILEC did not itself have that facility). However, should SONET rings be or become available there is otherwise a presumption that they would be offered. Further, as discussed and cited above, if the facilities exist, BA must offer them as UNEs, even if BA themselves does not use them similarly.

B. The Exclusion In Section 2.1.1(A)(2), IOF Transport, Of Mid Span Meets May Not Be Permitted Unless It Is Technically Unfeasible, A Showing Of Which Would Be The Burden Of BA

The exclusion of mid span meets under proposed Section 2.1.1(A)(2) is not circumscribed by the FCC Third Report and Order. BA should have to show why and how these cannot be provided where technically feasible.

IV. LOCAL LOOPS (Part B, Section 5)

Section 5.2.1 (A)(2), 56 kbps Digital Link, permits BA to offer 56K loops "using either copper or fiber…". In the areas or cases where both are possible, the CLEC should have the express option to request whichever best suits its customers' needs.

V. APPLICATION OF RATES AND CHARGES FOR NETWORK INTERFACE DEVICE UNDER PART B, SECTION 12.1.5, MAY BE EXCESSIVE OR CAPRICIOUS

A. Assessment of "Manual Intervention Surcharge" Under Part B, Section 12.1.5(C)(4), Should be Specified

The "Manual Intervention Surcharge" upon a CLEC, under proposed Section

12.1.5(C)(4), should be permitted only when the cause for manual intervention is not directly or

indirectly on the part of BA's acts or omissions foreseeably leading to a need for manual

intervention. The mere fact the cost may be incurred does not make it fairly assessed on the

CLEC.

B. Previously Accounted Charges Under Part B, Section 12.1.5(C)(5) "Installation Dispatch - Out," Should Not Be permitted to Duplicate

In BA's prior filing (Part B, Section 12.1.4 (C), "Application of Rates and Charges," as

filed August 27, 1999), dispatch charges only applied when "Out of Hours." If the installation

dispatch cost now proffered under proposed Section 12.1.5(C)(5), "Application of Rates and

Charges," was otherwise covered under the tariff, BA should now be required to show why it has

become an additional charge (NRC).

VI. PROVISIONING OF EXPANDED EXTENDED LOOPS (EELs) UNDER PART B,

SECTION 13, IS UNNECESSARILY RESTRICTIVE

A. The DTE Should Adhere to The Overarching Established Guiding Principle

Against Restrictive Practices in Provisioning EELs Tending To Bar

Entry And Prevent Open Competition

Generally, until the FCC rules on extending its presumption against restrictions that BA may place on UNE use, (4) the DTE should adhere to the overarching established guiding principle against restrictive practices tending to bar entry and

prevent open competition. Even to the extent the DTE permits BA to place restrictions on availability or use of any UNE, the burden must still be on BA to show why and how the restriction stems from technical or economic forces, rather than any unilateral, anti-competitive, or capricious imposition on its part. Further, the Department has stated that EEL arrangements should enjoy, at least, the provisioning specificity afforded their components.(5) Accordingly, the specifics of the proposed tariff should be the least restrictive as possible.

B. Application of Rates and Charges Should Be Cost-Based

1. Part B, Section 13.5.1(A)(1): EEL, Monthly Charges Must Be Transaction-Based

The Link Test charge submitted May 25 may not be in comportment with the DTE's order, D.T.E. 98-57, Phase I. BA's Dec. 27, 1999 Tariff No. 17 filing included "Link Test" charge for EELs. In March, 2000, DTE directed BA to remove this charge.(6) The charge was duly removed from the May 19 filing. Here, it reappears verbatim to the December, 1999, language. Unless the basis for this charge has changed since the DTE's March ruling, the charge is not permitted.

2. BA Cannot Aggregate Charges of Individual EEL Components

Simply for Convenience or to Maximize Revenue; The Aggregate Charges Must Be Cost-Based

The aggregate charges for EELs' elements must be cost-based. Specifically as to additional EEL charges introduced in the May 25 filing, at Section 13.5.1 (A)(2), BA should only be allowed to aggregate the charges for what would have been separate elements if it can show that there is no cost-savings or costs avoided by provisioning the EEL as a unit. BA cannot aggregate charges of individual EEL components simply for convenience or to maximize revenue.

VII. UNE COMBINATIONS AVAILABILITY AND ENGINEERING SHOULD NOT BE LIMITED TO BA'S HISTORIC USES

UNE combinations should be available as technically feasible, not only in manners that BA historically uses them. In approving Part B, Section 15.1.1(B), of BA's April, 2000, filing ("Requests for combinations of … UNEs that are not ordinarily combined and have not previously been combined in the Telephone Company network will be made available to the extent technically feasible … "), the DTE was satisfied that prevailing concerns regarding broad UNE availability had been met.(7)

The DTE has further stated that, once services are offered under individual agreements, they should be memorialized in the tariff, and cannot be unilaterally withdrawn.(8)

In the proposed tariff, BA has potentially curtailed the availability of UNE combinations as approved by the Department. Proposed §16.1.1(b) defines "other" UNE combinations as those "combined by the Telephone Company for use by a [carrier] in providing service to an end user." Other available UNE combinations should not be limited to those combined "by the Telephone Company," as such. Once a given UNE, or group of UNEs, is available or technically feasible, a CLEC should be permitted to choose requested combinations, as technically feasible, and to combine UNEs to best serve its particular customers. Defining "UNE combinations - other" as they are [only] combined by BA ("the Telephone Company") has a potentially stifling effect on

novel or CLEC-user specific combinations to meet market demand, expansion and growth.

Similarly, in §16.1(C), permitting "the Telephone Company," in its sole discretion and determination to require collocation as "technically necessary" is unnecessarily restrictive. BA may make a recommendation for collocation, but a CLEC should be permitted to provide in response a viable alternative if it exists an/or can be engineered, albeit at the CLECs expense. Only after reasonable consideration of all alternatives, including those perhaps unfamiliar to or not commonly used up to that point by BA, should a final determination be made about the necessity, or not, of collocation in order to purchase UNE combinations.

VIII. PHYSICAL COLLOCATION REPAIR AND MAINTENANCE ARRANGEMENTS SHOULD REFLECT EQUAL STANDING AND STATUS OF THE JOINT PARTIES TO THE COLLOCATION

A. Work Within A CLEC's Multiplexing Node, Described Under Part E, §2.2.6(B), May Not Always Require Written Approval

Collocation arrangements should be as bilateral and unrestrictive as possible. Work within a CLEC's own multiplexing node, described under Part E, §2.2.6(B), may not always require written approval. As such, this proposed requirement should be removed in favor of a tiered approach more closely reflecting the actual experience of the industry. For example, installation of major equipment may require written approval, as it affects neighboring collocators, while certain replacements or small deliveries may proceed in the normal course of business.

B. Trouble-shooting Must Be Cooperative Among Carriers While Each Takes Responsibility for its Own Facilities

Under Part E, §2.2.6(D), which attempts to impose a charge, only on a CLEC, if another company's personnel identify a problem with the CLEC's facilities, may not mirror adequately the "two-way street" intended. While we agree that each party in a multi-party continuum of service should be responsible for its own facilities and in isolating trouble therein, it often may require the efforts of both parties in tandem to find the end point of the trouble. We further agree that a party that neglects to check its own facilities before enlisting another company should be charged. Nonetheless, assuming the party to whose attention the trouble came attempts to isolate the trouble and does provide trouble status to the other party, then, either BA should also be charged when it is another carrier's personnel who are required to identify a trouble as being on the BA's side of the POT, or neither party should be charged when they make a good faith and diligent effort.

CONCLUSION

As a small CLEC, RNK cannot afford to compete with Bell Atlantic, and other CLECs, especially the larger CLECs, without a relatively competitive local market. Unwarranted restrictions on local services, imposed unilaterally by BA in its tariff filing, is exactly the kind of practice that hampers RNK's ability to provide the kinds of services to customers that the competitive market requires.

In summary, RNK urges the Department to consider carefully any and all unwarranted

restrictions, including charges, that significantly restrict local use services to CLECs by Bell Atlantic. Any such provisions not specifically addressed by the Department or the FCC should be immediately remedied.

Respectfully submitted,

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1.

1 "[W]here a requesting carrier purchases unbundled shared transport to meet increased customer demand, it effectively purchases the entire capacity of the incumbent LEC's network and will not incur non-recurring charges for additional increments of dedicated transport capacity. Purchasing only those increments of capacity that the requesting carrier requires to meet demand eliminates inefficient use of dedicated transport facilities. In addition, at low volumes requesting carriers will incur significantly higher recurring, per-minute costs to substitute dedicated transport for shared transport arrangements at low volumes. We reiterate the Commission's conclusion in the Third Order on Reconsideration that "the relative costs of dedicated transport, including the associated NRCs [non-recurring charges], is an unnecessary barrier to entry for competing carriers." Third Report & Order, ¶376.

2. 2 For example, in the D.T.E. 98-57, Phase I, the Department stated:

Because the Department agrees that the description of IOF transport in Part B, Section 2.1.1.A could be read as restricting the usage of unbundled dedicated IOF transport to the provisioning of local exchange and associated exchange access services within a LATA boundary, and thus, as being inconsistent with FCC rules, the Department strikes that portion of Part B, Section 2.1.1.A which reads "dedicated to the use of the ordering CLEC in provisioning of local exchange and associated exchange access services." The Department directs Bell Atlantic to revise its tariff to permit CLECs to use UNE IOF transport to provide toll services. D.T.E. 98-57, Phase I, Part X (B)(3), ¶5.

3.

3 "Notwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. In the Local Competition First Report and Order, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to

meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use." FCC Third Report and Order, ¶ 324.

4.

4 "We find no basis for placing a restriction on what services a carrier may offer using the loop network element. Indeed, the prospect of competition among carriers to provide services over the loop at prices that more closely reflect the provider's costs seems to us to accord fully with Congress's intent in passing the 1996 Act. We do not now decide whether or not this analysis may extend to the enhanced extended loop (EEL), but rather seek comment on that issue in the Further Notice of Proposed Rulemaking, below." Third Report and Order, ¶ 177.

5.

5 "Bell Atlantic stated during hearings that it would apply the standard intervals for the individual UNEs that make up the arrangement in the provisioning of a new EEL (Tr. 6, at 1095). The Department accepts this proposal and orders Bell Atlantic to include these intervals in its tariffed EEL offering. The Department also finds that it is important that CLECs who wish to convert their existing special access arrangements to EELs have access to a standard provisioning interval and not be required to negotiate provisioning intervals individually." Final Order, D.T.E. 98-57, Phase I (March 24, 2000), Part VII (E)(3) ¶3.

6. 6 The Department finds that Bell Atlantic's cost recovery mechanism for testing of the EEL arrangements is flawed in several respects. First, Bell Atlantic has proposed a monthly recurring charge to be applied evenly to all EEL arrangements. However, this charge is meant to recover the costs of individual testing of EEL loops, a scenario that Bell Atlantic agrees does not apply equally to all EEL arrangements (see Tr. 6, at 1100-02). Consistent with cost causation principles, it is unfair for CLECs to pay a monthly recurring rate for EEL loop testing if their EEL loops are in a condition that does not require them to be tested. Since Bell Atlantic has agreed that a non-recurring charge could be developed (see Tr. 6, at 1102), the Department directs Bell Atlantic to submit in its compliance filing a transaction-based non-recurring charge. D.T.E. 98-57, Phase I Part VII (G)(3), ¶1.

7. 7 D.T.E. 98-57 (Phase II) (May 4, 2000), Part II. A. (2)(b), (3).

8. 8 "We agree with AT&T and MCI WorldCom that it is unacceptable for Bell Atlantic to offer this service and to have the unilateral right to withdraw it without review by the Department. The uncertainty created by such a provision would undermine its value in supporting the development of conditions for a competitive local exchange market in Massachusetts. As AT&T correctly notes, CLECs will make business, marketing, and investment decisions based on the availability of UNE-P. If Bell Atlantic were to have the unilateral right to withdraw the service, it could substantially impair those investment and business choices. However, insofar as Bell Atlantic is bound both by a tariff and the dispute resolution and arbitration provisions of its interconnection agreements with the CLECs, it cannot act unilaterally in this regard. Accordingly, the Department's order to include the UNE-P service offering in the tariff offers the protection requested by the CLECs. In recognition that this is an arbitration proceeding, however, in which this very issue has been in dispute for many months, we also accept AT&T's argument that it is appropriate to memorialize Bell Atlantic's offer by directing it to provide UNE-P under the terms and conditions it has voluntarily set forth in its December 1, 1999, filing." Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-P (January 10, 2000), Part II(A), ¶7.